Supreme Court, U.S.
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No. 87-912

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1987

MARGARET KINZLI, et al.,
Petitioners,

VS.

CITY OF SANTA CRUZ,
Respondent.

Petition for Writ of Certiorari
to the United States Court of Appeals
For the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

GERALD D. BOWDEN
Counsel of Record
Rodney R. Atchison
Atchison & Anderson
A Professional Corporation
333 Church Street
Santa Cruz, California 95060
(408) 423-8383
Attorneys for Respondent

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2300

QUESTIONS PRESENTED FOR REVIEW

1. May a former landowner maintain federal jurisdiction in an action challenging local zoning regulations after selling all interest in the regulated land?

2. Should the United States Supreme Court overrule four of its own recent decisions requiring landowners protesting local zoning regulations to seek discretionary land use approval prior to maintaining an action under the taking clause?

PARTIES

Petitioners are Margaret Kinzli, Philip Kinzli, Ernest Kinzli and Evelyn Goosen.

Respondent is the City of Santa Cruz, California.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	2
STATUTES INVOLVED IN THIS CASE	2
STATEMENT OF THE CASE	2
ARGUMENT	2
I	
Petitioners Have Sold All Interest in the Land Which Is the Subject of This Litigation	2
II	
The Court Lacks Jurisdiction to Rule on This Case	3
CONCLUSION	4
APPENDIX I	
Declaration of Ernest L. Courtright	

TABLE OF AUTHORITIES

Cases

	Page
Agins v. Tiburon (1980) 447 U.S. 256	4
First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 107 S.Ct. 2378 (1987)	3
MacDonald, Sommer & Frates v. Yolo County (1986) 106 S.Ct. 2561	4
San Diego Gas & Electric v. San Diego (1981) 450 U.S. 621	4
Williamson County Regional Planning Commission v. Hamilton Bank (1985) 473 U.S. 172	4

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Respondent, CITY OF SANTA CRUZ, hereby submits its Brief in Opposition to the Petition for Writ of Certiorari which seeks review of the Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit sought to be reviewed is reported at (9th Cir. 1987) 818 F.2d 1449. This opinion was modified by an ORDER AMENDING OPINION filed August 7, 1987, adding Footnote number 7. This amendment is published at 830 F.2d 968.

The opinion of the United States District Court for the Northern District of California is reported at (N.D. Cal. 1985) 620 F. Supp. 609.

STATEMENT OF JURISDICTION

Petitioners seek to invoke this Court's jurisdiction under 28 U.S.C. § 1254(a). For reasons set forth below, this Court lacks jurisdiction to consider the questions raised in this Petition.

STATUTES INVOLVED IN THIS CASE

This action concerns a zoning ordinance adopted by the initiative process by the electors of the CITY OF SANTA CRUZ in March, 1979. This ordinance is known as Measure O.

STATEMENT OF THE CASE

In 1979, the CITY OF SANTA CRUZ adopted an open space greenbelt measure. Petitioners' property was one of several large parcels of undeveloped land designated by that measure. Petitioners filed an action in Federal District Court alleging, among other things, that the greenbelt measure affected a regulatory taking of their property. The case was tried and a judgment was rendered on the merits in favor of the CITY OF SANTA CRUZ. The United States Court of Appeals for the Ninth Circuit found that the district court lacked jurisdiction and ordered the case dismissed.

Shortly after the case was submitted to the Court of Appeals, Petitioners disposed of all interest in the land. They received $3,000,000.00 in the sale.

ARGUMENT

I

Petitioners Have Sold All Interest in the Land Which Is the Subject of This Litigation

This case has been mooted by sale of the property. Petitioners below argued that the CITY'S greenbelt regulations affected a regulatory taking of their property by denying all use and removing all value. Immediately after this matter was submitted to the United States Court of Appeals, Petitioners sold the land for $3,000,000.00. In doing so, they lost their standing to protest the

regulations and conclusively established that the trial court was correct in finding no regulatory taking took place. *See* Appendix I, Declaration of Ernest L. Courtright.

II

The Court Lacks Jurisdiction to Rule on This Case

The essence of Petitioners' argument is that the plaintiffs in *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles,* (1987) 107 S.Ct. 2378 were able to establish federal jurisdiction without complying with the ripeness cases on which the Ninth Circuit rested the decision presently under review. That same argument was made to the Ninth Circuit in a Petition for Rehearing. In response to that request the Ninth Circuit amended its opinion by adding a footnote. The Court's Order Amending Opinion is published at 830 F.2d 968. It reads as follows:

> "[7] In their petition for rehearing, the Kinzlis erroneously argue that their takings claim is ripe under the Supreme Court's recent decision in *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles,* 55 U.S.L.W. 4781 (U.S. June 9, 1987). In *First English Evangelical,* the Supreme Court held that the question of whether the fifth amendment requires compensation for regulatory takings which are ultimately invalidated by the courts was ripe for consideration. The Court based its decision on the fact that the state court below had assumed that a taking had occurred, denying compensation on the ground that the only remedy for a regulatory taking is nonmonetary relief. 55 U.S.L.W. at 4783-84. The Court explicitly distinguished cases such as this one in which 'the factual disputes yet to be resolved by state authorities might still lead to the conclusion that no taking had occurred,' or to the conclusion that 'just compensation' had been paid. 55 U.S.L.W. at 4783-84 & n.6 (distinguishing the *MacDonald, Sommer & Frates* line of cases)."

First Church dealt exclusively with the available remedy in regulatory taking cases. That question was finally presented in a

posture ripe for review because the only relief prayed for had been struck from the Complaint by the trial court and that action had been sustained by the State Court of Appeal. In the words of the Court, "the disposition of the case on these grounds isolates the remedial question for our consideration." 96 L.Ed.2d 250, 261.

The issue in this case is not whether KINZLIS were entitled to monetary damages, but whether the CITY was liable at all. That was the issue in the four regulatory taking cases elaborating the ripeness doctrine in the zoning context. Those cases are *Agins v. Tiburon* (1980) 447 U.S. 256; *San Diego Gas & Electric v. San Diego* (1981) 450 U.S. 621; *Williamson County Regional Planning Commission v. Hamilton Bank* (1985) 473 U.S. 172; and *MacDonald, Sommer & Frates v. Yolo County* (1986) 106 S.Ct. 2561.

In each of these decisions the Supreme Court held that the ripeness doctrine requires landowners challenging zoning on regulatory taking grounds to process an application for a permitted use and obtained a final denial. KINZLIS' failure to comply with that clear mandate is undisputed.

CONCLUSION

KINZLIS argue in this Petition that they should be relieved of the requirement imposed by four recent decisions of this Court. Granting that relief would severely undermine the reliability of these decisions and lead to further confusion in an area of law already beset by confusing ambiguity.

Dated: December 28, 1987

Respectfully Submitted,

GERALD D. BOWDEN
Counsel of Record
Rodney R. Atchison
Atchison & Anderson
A Professional Corporation

By GERALD D. BOWDEN
Attorneys for Respondent

APPENDIX I

DECLARATION OF ERNEST L. COURTRIGHT

I, ERNEST L. COURTRIGHT, declare as follows:

1. I am one of three partners doing business as Santa Cruz Auto Plaza. On December 30, 1986, Santa Cruz Auto Plaza purchased the parcel of land subject to litigation with the CITY OF SANTA CRUZ from the KINZLI family.

2. The property was purchased for 3.2 million dollars.

3. The property was purchased in fee simple without any contingencies.

I declare under penalty of perjury that the foregoing is true and correct and this declaration is executed this 18th day of December, 1987, in Santa Cruz, California.

Ernest L. Courtright

ERNEST L. COURTRIGHT